

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

MICHAEL WHITING, ET AL. §
§
V. § CIVIL ACTION NO. G-01-429
§
MICHAEL KELLY, ET AL. §

ORDER OF DISMISSAL

Before the Court for its Order of Acceptance is a Report and Recommendation of the United States Magistrate Judge, entered on May 10, 2005, which recommends that Plaintiffs' claims of deliberate indifference to their serious medical needs be dismissed with prejudice. Plaintiff Whiting has filed objections on behalf of all co-Plaintiffs: Stephen Austin, Michael Morales, Larry Shafer and Alpha Tippins, Jr. In their objections, Plaintiffs complain at length about the amount of time taken by the Court to bring this matter to fruition. Plaintiffs are admonished that the shear number of initial Plaintiffs in this matter, coupled with numerous incidents of mail which was returned to the Court because many Plaintiffs failed to timely notify the Court of their address changes; re-mailing; Plaintiffs who dropped out of the litigation after interrogatories had been propounded; and numerous unnecessary filings by Plaintiff Whiting despite orders by the Court to refrain from such activity, all served to delay the orderly processing of this case and resulted in a waste of limited judicial resources. Moreover, Plaintiffs wholly failed to address any of the substantive issues discussed in the Report and Recommendation. Instead, they merely reiterate their complaints about inadequate treatment and inconsistent policies regarding the treatment of Hepatitis-C, but wholly fail to show how they were actually harmed by the alleged inadequacies. Plaintiffs have also failed to provide any evidence, whatsoever, to support their claim

that any physician or medical provider intentionally mistreated them in a deliberate attempt to cause them harm. Plaintiff's objections, even if true, fail to state a cognizable claim under Section 1983.

After *de novo* review pursuant to 28 U.S.C. §636 (b)(1)(C), this Court is of the opinion that the Report and Recommendation of the Magistrate Judge should be, and it is hereby, **ACCEPTED** in its entirety and incorporated by reference herein. It is the **ORDER** of this Court that this cause is **DISMISSED** with prejudice for failure to state a claim for which relief can be granted and as frivolous.

This Order does not release Plaintiff or the Texas Department of Criminal Justice - Institutional Division from the obligation to pay the filing fee previously imposed. Plaintiffs are advised that if they appeal this dismissal, they will each be required to pay the appeal fee of \$255.00 pursuant to the Prison Litigation Reform Act, and they must submit a 6-month certificate of their inmate trust account when they file their notice of appeal.

A certified copy of this Order shall be mailed to: **TDCJ-Office of the General Counsel**, P.O. Box 13084, Austin, Texas, 78711; and, to **TDCJ Local Funds Division**, P.O. Box 629, Huntsville, TX 77342-0629.

DONE at Galveston, Texas, this the 19th day of July, 2005.



Samuel B. Kent
United States District Judge